UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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GROUP 3600

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 08/655,136
Filing Date: May 30, 1996
Appellant(s): TOGNAZZINI, BRUCE

Jeffrey A. Berkowitz, Reg. No. 36,743
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8-19-04. *(1)Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly

affect or be directly affected by or have a bearing on the decision in the pending appeal

is contained in the brief.

(3)   Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4)   Status of Amendments After Final

No amendment after final has been filed.

(5)   Summary of Invention

(6)   Issues

The appellant's statement of the issues in the brief is correct.

(7)   Grouping of Claims

Appellant's brief includes a statement that claims 1 and 21, claims 15 and 28,

and claims 5-10 and 22-27 do not stand or fall together and provides reasons as set

forth in 37 CFR 1.192(c)(7) and (c)(8).

(8)   Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9)   *Prior Art of Record*

5,757,917	ROSE et al.	5-1998
5,343,519	FELDMAN	8-1994
5,737,610	SANDIG et al.	4-1998
4,941,172	WEINBAUM et al.	7-1990
5,396,546	REMILLARD	3-1995
5,717,923	DEDRICK	2-1998
5,715,399	BEZOS	2-1998
5,727,163	BEZOS	3-1998

(10)   *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Response to Amendments/Arguments

Regarding claims 1 and 21, Applicant is of the opinion that the prior art of
Rose does not teach "user's information being sent back to the user from the
seller and stored in data memory for subsequent transactions". However, this
feature is not found in the claims and although the claims are interpreted in light
of the specification, limitations from the specification are not read into the claims
(*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)).

Regarding claims 15 and 28, Applicant states, "there is no disclosure in Bezos ('399) of the feature of the seller sending customer information directly to the customer's memory for use in subsequent transactions". Claims 15 and 28 do not recite sending *customer* information but merely "sending information stored in said seller memory". "Sending information" is much broader than "sending customer information". On page 15, lines 7-10, of the Applicant's Specification the Applicant refers to seller memory as it exists in the prior art, and prior art merchant memory comprises other information, in addition, to customer information. Nonetheless, Bezos teach sending customer information provided by a customer to a seller, from seller memory to customer memory for use in subsequent transactions (address data, credit card data- '399, figure 2; column 6, lines 33-40). The Applicant states that the prior art does not teach "seller [storing] customer information at the customer memory for subsequent transactions". However, this limitation is not found in the claims and although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)). The 112 rejection to claim 28 is maintained because it is not clear at what stage the "connecting" step takes place. For example, to one of ordinary skill the "connecting step" may only be associated with the "subsequent order". Note, the steps of "providing", "storing", and

"confirming" are not directed to an order being placed or the exchange of order

data.

Regarding claims 5-10 and 22-27, the Applicant is of the opinion that the

prior art does not disclose "an external memory that loads information into the

device memory that was received from the seller". The Applicant equates the

above with an advantageous feature of the "seller storing customer information in

the customer's device memory". However, the claim does not refer to "customer

information" and although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims (*In re Van Geuns*,

988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)). Regarding "seller memory",

this is non-functional data. The limitation of "wherein said information comprises

card information relating to a telephone purchase and is received from a seller

memory connectable to said external memory", merely further describes the

data. It is non-functional as it does, "alter how the machine functions (i.e., the

descriptive material does not reconfigure the computer)" (MPEP, 2106, section

VI). Nonetheless, Feldman teaches a device for loading autodialers with a phone

number and unique customer personal codes (figure 3). To one of ordinary skill

this information has to be programmed into the device memory. This task can be

performed manually or automatically. In either case it comes from some

"memory" be it human memory, a pad or notebook containing a list of numbers

and codes, or a computer memory, such as a disk or CD-ROM, where the "seller"

is the owner of the device or the service that provides customers with the

autodialers (*In re Venner*, 262 F.2d 91, 95, 120 USPQ 192, 196 (CCPA 1958)).

The Examiner has also applied a new 112 2nd rejection to claim 5 in light of the

amendment to the preamble of claim 5.

The Examiner would like to apologize for a typographical error in the

previous Office Action. Specifically, claims 15 and 22 were not in the 112 2nd

rejection section. Claims 15 and 22 recite the same language as claims 28 and 5,

respectively, and so the rationale, for making the 112, would have applied. In

response to the 112 2nd, the Applicant did not amend claim 28 and removed the

word "portable" from claim 5. Therefore, the Examiner is examining claims as if

claim 15 wasn't amended and the "word" portable was removed from the

preamble of claim 22.

Claim Rejections - 35 USC § 112

Claim 5-10, 15, 22-28 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly

claim the subject matter which applicant regards as the invention.

Claims 5 and 22 have been amended to be directed to a device. A

limitation of the claim recites a seller memory connectable to external memory.

However, the seller memory is not part of the portable device (Applicant's figure

1). Therefore, the Applicant has not clearly defined the subject matter that the Applicant regards as the invention.

Claims 6-10 and 23-27 are also rejected as they depend from claims 5 and 22, respectively.

Claims 15 and 28 are rejected as the claim recites performing "sending information stored in said seller memory from said telephone at the seller site to said customer memory for use during a subsequent order" steps without first connecting to a user's telephone (Specification, page/line 14/23-16/10). In general, the claim does not provide one of ordinary skill a method for transferring data between customer and seller telephones. Specifically, the claim should recite an initiation of contact, a call or the like for enabling data to be transferred between devices.

Claim Rejections - 35 USC § 103

Claims 1 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose et al., U.S. Patent No. 5,757,917 in view of Sandig et al., U.S. Patent No. 5,737,610 and Remillard, U.S. Patent No. 5,396,546.

As per claims 1 and 21, Rose et al. teach a system for purchasing goods and services over the internet comprising: a telephone set connected to a telephone line (column 2, lines 50-62), a data interface connected to a telephone

line (figures 1-3; column 2, lines 50-62; column/line 4/66-5/13), data memory for

storing card information from a called station and a key for activating said data

memory to send stored information to another called station (figure 1; column/line

7/35-8/25; column 8, lines 58-67). Rose et al. do not explicitly recite a card

reader and loading data from a data memory to a portable device. Sandig et al.

teach downloading data from a called station over a telephone line, storing the

data in data memory, and transferring the information from data memory, using a

docking port, to a portable device having device memory (abstract; figure 1).

Remillard teaches a telephone set connected to a telephone line with a data

interface, data memory, a docking port for receiving electronic devices (abstract;

figures 1-3 and 6A-B; column/line 5/56-6/61; column 8, lines 38-60) and a card

reader for accessing goods and services online (column 3, lines 17-33).

Therefore, it would have been obvious to one of ordinary skill to combine the

teachings of Rose et al. Sandig et al. and Remillard. Rose et al. teach a user

obtaining goods and services from an internet warehouse over a telephone

network using a credit card ('917, column 8, lines 1-12), to one of ordinary skill it

would have been obvious to make the entering of credit card data more efficient

by automating the process through the use of a card reader attached to the

telephone set of Rose ('917, column 2, lines 50-62; '546, figures 1-3 and 6A-B).

Further, by incorporating the teachings of Sandig et al. a user can access and

download data using a telephone set connected to a telephone line ('610, column

2, lines 35-50; '917, column 2, lines 50-62; '546, figures 1-3 and 6A-B) for use in

another electronic device or devices ('610, column 3, lines 32-55).

Claims 15 and 28 is rejected under 35 U.S.C. 103(a) as being

unpatentable over Bezos, U.S. Patent No. 5,715,399 in view of Bezos, U.S.

Patent No. 5,727,163 and Dedrick, U.S. Patent No. 5,717,923.

As per claims 15 and 28, Bezos ('399) teaches a method for sending and

receiving goods comprising: providing a telephone having a customer memory at

a customer site for storing and sending information (figures 1 and 2) and

connecting, by a telephone network, a telephone at a customer site with a

telephone at a seller site while an order for goods is placed (abstract; column 5,

lines 23-45) and storing in a seller memory of a telephone at a seller site,

information provided by said customer (figure 3). Bezos ('399) doesn't specifically

recite how the customer information was entered into the system. Bezos ('163)

teaches customer information keyed in by personnel at a seller site (column 7,

lines 23-50; column 9, lines 43-60). Bezos ('399) also doesn't explicitly teach

confirming whether a customer's telephone is memory equipped. Dedrick

teaches a system for providing customized information over a network to a user

comprising confirming, on a display, properties of device memory (e.g. whether a

customer's telephone is memory equipped) and sending information stored in

seller memory for use during a subsequent order (column 4, lines 32-65; column

6, lines 60-63; column 11, lines 45-61; column 12, lines 26-40; column 16, lines 40-51). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Bezos ('399), Bezos ('163) and Dedrick. Bezos ('399) teaches a system for sending and receiving orders for goods where a customer has previously placed at least one order, utilizing a secure protocol for exchanging credit card data between buyer and seller ('399, column 5, lines 24-31). Bezos ('163) provides a method for a seller to initially receive credit card data where the received data is keyed into a database for future use ('163, abstract; column 9, lines 44-60). Bezos ('399) also teaches confirming a credit card transaction comprising a seller sending an e-mail to buyer ('399, column 6, lines 19-50). Specifically, Bezos ('399) teaches an e-mail confirmation message that includes an advertisement ('399, column 6, lines 28-40). Dedrick teaches a method of providing users with customized advertisements based on a user profile and/or users variables ('923, column 11, lines 45-61; column 12, lines 26-40). One of the user characteristics that a seller can monitor is how the user consumes or processes electronic information (e.g. advertisements- '923, column 14, lines 52-54) such as audio, video, graphics, animation, text, etc. ('923, column 4, lines 44-55; column 5, lines 42-49; column 6, lines 33-52 and 60-63; column 11, lines 45-61). Therefore, it would have been obvious to one of ordinary skill to identify a customer's capabilities for consuming electronic information (e.g. whether a

telephone is customer equipped) and provide advertisements to a user in the appropriate format and/or select out users who use a particular processing device (e.g. memory) and send advertisements to only those users ('923, column 5, lines 34-49; column 11, lines 45-61).

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feldman, U.S. Patent No. 5,343,519 in view of Winebaum et al., U.S. Patent No. 4,941,172.

As per claims 5-10 and 22-27, Feldman teaches a portable device with memory (figure 3), a docking port for receiving card information from an external memory and received from a seller memory (figure 4; column 4, lines 41-62), where the device comprises: a converter for converting information from said device memory into an audible representation of the information (abstract), a send key for activating said converter and transmitting the audible representation, via a microphone of a telephone set, to a called station (column 4, lines 6-17), a plurality of keys for controlling a plurality of device memories each selectively storing data (figure 3; column 4, lines 25-41), a display for showing the contents of the device memory (figure 3), a digital to analog converter and an electro-acoustical transducer (figures 1-3), a plurality of keys for entering a password prior to loading information into said device and prior to

activating said converter (column 2, lines 12-32; column 4, lines 35-55). Feldman

does not specifically recite phone purchases. Winebaum et al. teach a pre-

programmed portable device with memory that converts information from said

device memory into an audible representation of the information and transmits

the audible representation, via a microphone of a telephone set to a called

station (abstract; column 2, lines 41-65). The portable device can be a credit card

(column 2, lines 36-48) and used to make a telephone purchase (e.g. purchasing

a telephone or obtaining goods and services via telephone) (column 3, lines 35-

50; column 8, lines 52-67). Therefore, it would have been obvious to one of

ordinary skill to combine the teachings of Feldman and Winebaum et al. in order

to allow users to efficiently connect with service providers ('172, column 1, lines

16-23).

(11)   Response to Argument

112 Second Paragraph

Claims 5-10 and 22-27 are directed to a device. Independent claims 5 and 22

recites "a seller memory connectable to external memory". However, the seller memory

is not part of the portable device (Appellant's figure 1). In re Zletz is clear (893 F.2d 319,

321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)), "... An essential purpose of patent

examination is to fashion claims that are precise, clear, correct, and unambiguous. Only

in this way can uncertainties of claim scope be removed, as much as possible, during

the administrative process" (MPEP 2106, II, C- "Review the Claims", pages 7 and 8).

Therefore, the Appellant has not clearly defined the subject matter that the Appellant

regards as the invention.

Claims 15 and 28 recite "sending information stored in said seller memory from

said telephone at the seller site to said customer memory for use during a subsequent

order". However, these steps are performed without first connecting to a user's

telephone (Specification, page/line 14/23-16/10). The Appellant asserts that this is

inherently present in the claims as they recite connecting a customer telephone with a

seller telephone while an order is being placed (Appeal Brief, page 7). The Examiner

respectfully disagrees. The relationship between the limitation of "connecting said

telephone at a customer site with said telephone at a seller site while an order for goods

is placed" and the rest of the claim is not clear. The first limitation is a telephone. The

second describes attributes of telephone at a seller site. Neither limitation, specifically or

implicitly, recites or refers to an order being placed. For example, the first and second

limitations can describe an exchange of information prior to actual ordering, such as

registration. Therefore, the Appellant has not clearly defined the subject matter that the

Appellant regards as the invention (In re Zletz (893 F.2d 319, 321-22, 13 USPQ2d

1320, 1322 (Fed. Cir. 1989)), "... An essential purpose of patent examination is to

fashion claims that are precise, clear, correct, and unambiguous. Only in this way can

uncertainties of claim scope be removed, as much as possible, during the administrative

process" (MPEP 2106, II, C- "Review the Claims", pages 7 and 8)).

Claim Group I

The broadest claim in this group is claim 1 therefore the Examiner directs his

response to this claim.

Appellant is of the opinion that the combined prior art of Rose et al., Remillard,

and Sandig et al. do not teach Appellant's system as defined by claim 1. Specifically,

Appellant asserts that the combined prior art does not teach or suggest "an apparatus

including a data memory for storing information including card information from one

called station and a key for activating said data memory to send said stored information

to another called station" (Appeal Brief, page 9, Section 2). The Examiner respectfully

disagrees. Regarding Rose et al., Appellant states that Rose et al. does not include "a

key for activating the data memory" because Rose et al. does not disclose a card

number being sent back to the buyer hence there would be no need for a key (Appeal

Brief, page 9, Section 2). This, however, is not the portion of Rose et al. that the

Examiner is relying on to make the rejection. Rose et al. teaches an apparatus for

sending information to called stations over a telephone line (e.g. internet), such as the

system of Fig. 1 ('917, figure 1). The Rose et al. system/apparatus comprises a user

computer for buying goods and services over a *telephone line* (column 2, lines 55-58).

Hence, Rose et al. teaches a telephone set and a data interface connected to a

telephone line (note: computers connect to the internet over a telephone using a

modem; modems enable a computer to transmit and receive data over telephone line,

for example, by a dialing- <u>Microsoft Press Computer Dictionary 3rd Edition</u>). The Rose et

al. system/apparatus also comprises a seller computer (i.e. data memory) that receives

card information sent by the buyer computer (a called station because it sends and

receives data over the telephone line). Regarding " a key", Rose et al. teaches

transmitting over said phone line a payment request message ('917, figure 6B) that

comprises a buyer card number (i.e. stored information including card information

received from buyer computer/called station) ('917, figure 6B; column 8, lines 21-26) to

a remote computer (i.e. another called station) ('917, figures 1, 2, 3, and 5; column 3,

lines 50-67; column 8, lines 12-38). Specifically, Rose et al. discloses transmitting the

message and card number using e-mail ('917, column 8, lines 18-20), hence it is

inherent that a physical key (e.g. keyboard key) or a software key (e.g. "send" button) is

used in order to send the message. Rose et al. doesn't specify how a buyer is to send

buyer card information. A suitable means for transmitting card information is disclosed

by Remillard who teaches using a card reader connected *to a data interface and a*

telephone set (both of which are connected to a phone line) ('546, figure 2) to send card

information over a telephone line ('546, figures 3 and 6B; column 6, lines 8-18; column

7, lines 15-46). While Sandig et al. disclose a docking port for receiving a portable

device and loading data from a data memory onto said portable device (abstract; figure

1; column 1, lines 25-48). Therefore, it would have been obvious to one of ordinary skill

to combine the teachings of Rose et al., Remillard and Sandig et al. to allow buyers in the Rose system to more efficiently transmit card information and sellers to backup files stored in data memory in case said data memory fails or becomes corrupted.

Claim Group II

The broadest claim in this group is claim 15 therefore the Examiner directs his response to this claim.

Appellant is of the opinion that the combined prior art of Bezos ('399), Bezos ('163), and Dedrick do not teach Appellant's system as defined by claim 15. Specifically, Appellant asserts that the combined prior art does not teach or suggest "a system including a seller telephone that sends information to a customer memory in a customer telephone for use during a subsequent order." The Examiner respectfully disagrees. Specifically, Bezos ('399) teach a seller telephone transmitting information such as a customer credit card type, expiration date, and the last five digits of each customer credit card ('399, figure 2) to a customer telephone to allow a user to select a credit card to make a purchase ('399, abstract). Therefore, the Bezos teach the Appellant's "a system including a seller telephone that sends information to a customer memory in a customer telephone for use during a subsequent order." The Appellant attempts to differentiate the system of claim 15 from Appellant's system by requiring the merchant of Bezos ('399) to store information in a customer memory at a customer site (Appeal Brief, page 12, lines 12-15). Initially, the Examiner would like to point out that this

limitation is not found in claim 15, and although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims (*In re Van*

Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)). Nonetheless, the seller of

the Bezos sends to a customer telephone information such as a customer credit card

type, expiration date, and the last five digits of each customer credit card ('399, figure 2)

to a customer telephone to allow a user to select a credit card to make a purchase

('399, abstract). Therefore, as figure 2 clearly depicts information from the seller (i.e.

seller information) transmitted and displayed on a customer telephone. Hence, it is

stored at the customer site. Regarding "telephones", a computer connects to the

internet over a telephone using a *modem* ('399, figure 1; column 5, lines 5-23 and 55-

65). A modem enables a computer (merchant or buyer- see'399, figure 1) to transmit

and receive data over telephone line (Microsoft Press Computer Dictionary 3rd Edition).

Hence, the customer and seller computer are telephones. Bezos ('399) doesn't

specifically recite how the customer information was entered into the system. Bezos

('163) teaches customer information keyed in by personnel at a seller site that

comprises a telephone with seller memory ('163, figures 1, 4 and 5B; column 7, lines

23-50; column 9, lines 43-60). While, Dedrick teaches a method of providing users with

customized advertisements based on a user profile and/or users variables ('923, column

11, lines 45-61; column 12, lines 26-40). One of the user characteristics that a seller can

monitor is how the user consumes or processes electronic information (e.g.

advertisements- '923, column 14, lines 52-54) such as audio, video, graphics,

animation, text, etc. ('923, column 4, lines 44-55; column 5, lines 42-49; column 6, lines

33-52 and 60-63; column 11, lines 45-61). Thus a seller can provide advertisements

based on whether a customer telephone ('399, figure 1, items 18 and 29) is memory

equipped such as the means (e.g. software, hardware, peripherals) with which the

customer computer/telephone processes audio, video, text and graphic data. To one of

ordinary skill, Bezos ('399) teaches a system for sending and receiving orders for goods

where a customer has previously placed at least one order, it would have been obvious

to implement the Bezos ('399, column 5, lines 24-31) using the secure protocol of Bezos

('163) in order to securely exchange credit card data Bezos where the received credit

data is keyed into a seller memory for future use ('163, abstract; column 9, lines 44-60).

Further, with the teachings of Dedrick, a seller can market ads to a customer based on

capabilities for consuming electronic information (e.g. whether a telephone is customer

equipped) ('923, column 5, lines 34-49; column 11, lines 45-61).

Claim Group III

The broadest claim in this group is claim 5 therefore the Examiner directs his

response to this claim.

Appellant is of the opinion that the combined prior art of Feldman and Winebaum

et al. do not teach Appellant's system as defined by claim 5. Specifically, Appellant

asserts that the combined prior art does not teach or suggest a device including a

"docking port for receiving information comprising card information relating to a

telephone purchase from a seller memory and loading said information into a device

memory" (Appeal Brief, page 15, lines 1-4). The Examiner respectfully disagrees.

Feldman teaches a docking port, such as the programmable station of Figure 4 ('519,

figure 4; column 4, lines 48-55), for loading information into an autodialer (i.e. device

memory). Specifically, Feldman teaches the loading of card information such as a PIN

or credit card number ('519, column 3, lines 55-61; column 4, lines 48-55). The

Appellant's requirement for the information to relate to a telephone purchase is non-

functional data and intended use. Nonetheless, this is a feature taught by Weinbaum et

al.. Weinbaum et al. teach a pre-programmed portable device with memory that

converts information from said device memory into an audible representation of the

information and transmits the audible representation, via a microphone of a telephone

set to a called station (abstract; column 2, lines 41-65). The portable device can be a

credit card ('172, column 2, lines 36-48) and used to make a telephone purchase (e.g.

purchasing a telephone or obtaining goods and services via telephone) ('172, column 3,

lines 35-50; column 8, lines 52-67). Therefore, it would have been obvious to one of

ordinary skill to combine the teachings of Feldman and Winebaum et al. in order to

allow users to efficiently connect with service providers ('172, column 1, lines 16-23).

Regarding, the ability of the docking port to receive information from an external

memory, the Examiner asserts (see Office Action dated 3-10-04, Response to

Amendments/Arguments section provided above) that this is non-functional data as it

merely further describes the data and does not "alter how the machine functions (i.e.,

the descriptive material does not reconfigure the computer)" (MPEP, 2106, section VI).

Nonetheless, to one of ordinary skill the presence of the "external memory" and the

system of Feldman is inherent or at least obvious. Recall, Feldman teaches a device for

loading autodialers with a phone number and unique customer personal codes (figure

3). To one of ordinary skill this information *has to be provided* to the docking port of

Feldman ('519, figure 4), a task can be performed manually or automatically. In either

case it comes from some "memory" be it human memory, a pad or notebook containing

a list of numbers and codes, or a computer memory, such as a disk or CD-ROM, where

the "seller" is the owner of the device or the service that provides customers with the

autodialers (*In re Venner,* 262 F.2d 91, 95, 120 USPQ 192, 196 (CCPA 1958)).

Otherwise, it has to be explained how the docking port of Feldman ('519, figure 4)

receives said codes ('519, column 4, lines 48-55). In re Venner is clear,
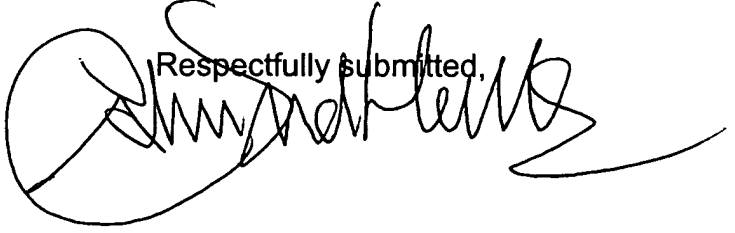
> we believe it to be a settled rule that it is not invention to produce a device
> which is within the realm of performance of a skilled mechanic in the ordinary
> progress of producing a device required to effectuate a given result.

Therefore, the presence of external memory to load data into a docking station is not

invention.

(12) Conclusion

Appellant's arguments are not persuasive in that they fail to give fair credit to the

level and knowledge of those of ordinary skill in the appropriate art and what would

have been obvious to such a person in view of the teachings of the prior art.

For the above reasons, it is believed that the rejections should be sustained.
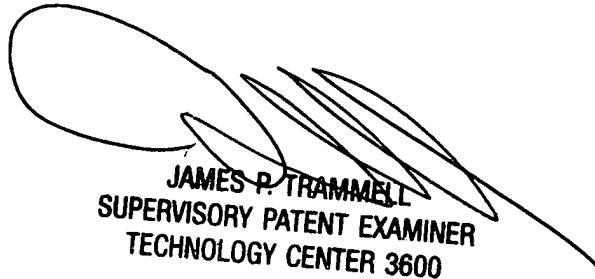
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